

The Senate Powersharing Agreement of the 107th Congress (2001-2003): Key Features

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Summary

The 2000 elections resulted in a Senate composed of 50 Republicans and 50 Democrats. An historic agreement, worked out by the party floor leaders, in consultation with their party colleagues, was presented to the Senate (S.Res. 8) on January 5, 2001, and agreed to the same day. The agreement was expanded by a leadership colloquy on January 8, 2001. It remained in effect until June of 2001, when Senators reached a new agreement to account for the fact that a Senator had left the Republican party to become an Independent who would caucus with the Democratic party.

This report describes the principal features of this and related agreements which provided for Republican chairs of all Senate committees after January 20, 2001; equal party representation on all Senate committees; equal division of committee staffs between the parties; procedures for discharging measures blocked by tie votes in committee; a restriction on the offering of cloture motions on amendable matters; restrictions on floor amendments offered by party leaders; eligibility of Senators from both parties to preside over the Senate; and general provisions seeking to reiterate the equal interest of both parties in the scheduling of Senate chamber business. Also noted is that not all aspects of Senate practice were affected by the powersharing agreement.

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Background and Opening Day Actions

The November 2000 elections caused the Senate to be tied with 50 Republicans and 50 Democrats. The issue was further complicated by the election of Richard B. Cheney as Vice President. When the 107th Congress convened on January 3, 2001, the incumbent Vice President, Albert Gore Jr., presided until Vice President-elect Cheney was sworn in on January 20. Although a titular Democratic majority existed (with Vice President Gore available to break tie votes) and could have tried to organize the Senate, any such organization actions could have been revisited under Republican auspices once Vice President Cheney was in the chair to break ties.

The Senate often negotiates formal and informal agreements to govern the legislative agenda and its consideration of individual measures. Similar negotiations about the organization of the Senate began informally in late November between the Democratic leader, Senator Tom Daschle (D-SD), and the Republican leader, Senator Trent Lott (R-MS). Talks continued after the Senate convened, and proposals under consideration by the two leaders were discussed at meetings of the party conferences.¹

Senator Daschle, recognized as majority leader by Vice President Gore who was presiding, made no attempt to replace the incumbent Senate administrative officers with Democratic nominees. In an unprecedented step, the Senate agreed to S.Res. 3, electing Senator Robert C. Byrd (D-WV) President *pro tempore* upon the adoption of the resolution, and simultaneously electing Senator Strom Thurmond (R-SC) President *pro tempore*, to be effective at noon on January 20.

The Senate designated committee chairmen on opening day. As Senate committees are continuing bodies, Senators serving on panels in the 106th Congress retained their positions and roles when the 107th Congress convened. Several committee chairmen did not return to the 107th Congress, however, and, for administrative reasons, it was necessary for the Senate, at a minimum, to designate acting committee chairs to replace them, pending election of the full committee slates. The Senate went further in adopting S.Res. 7, naming Democratic committee chairs on all Senate committees to serve as such through January 20, and naming Republican chairs to assume their posts at noon that day.

The Powersharing Agreement: S.Res. 8

Two days later, on the afternoon of January 5, 2001, Senator Daschle presented to the Senate S.Res. 8, a measure to provide the organizational basis for powersharing in the Senate when the parties were equally divided. The resolution was agreed to later that day.² The key provisions of the resolution were as follows:

Committees

- All Senate committees would have equal numbers of Republicans and Democrats;
- a full committee chair could discharge a subcommittee from further consideration of a measure or matter, if it was not reported because of a tie vote; and

¹ Mark Preston and Paul Kane, "Senate Strikes Historic Deal," *Roll Call*, vol. 46, Jan. 8, 2001, pp. 1, 15.

² The text of the resolution can be found in the *Congressional Record*, daily edition, vol. 147, Jan. 5, 2001, p. S48. Comments by Sens. Lott, Daschle and others appear at pp. S29-31, S32-44.

- budgets and office space for all committees were equally divided, with overall committee budgets to remain within “historic levels;”³

Discharging Measures or Matters

- If a measure or nomination was not reported because of a tie vote in committee, the majority or minority leader (after consultation with committee leaders) could move to discharge the committee from further consideration of such measure or nomination;
- this discharge motion could be debated for four hours, equally divided and controlled by the majority and minority leaders. After the expiration (or yielding back) of time, the Senate would vote on the discharge motion, without any intervening action, motion, or debate; and
- if the committee were discharged by majority vote, the measure or matter would be placed on the appropriate Senate calendar to await further parliamentary actions.

Agenda Control and Cloture

- The agreement prohibited a cloture motion from being filed on any amendable item of business during the first 12 hours in which it is debated;
- required both party leaders “to seek to attain an equal balance of the interests of the two parties” in scheduling and considering Senate legislative and executive business; and
- noted that the motion to proceed to any calendar item “shall continue to be considered the prerogative of the Majority Leader,” although qualifying such statement with the observation that “Senate Rules do not prohibit the right of the Democratic Leader, or any other Senator, to move to proceed to any item.”

Supplemental Colloquy, January 8, 2001

On January 8, 2001, the provisions of S.Res. 8 were further clarified and other procedures relating to the powersharing agreement were announced. Senator Harry Reid (D-NV), the assistant Democratic floor leader, received unanimous consent to enter a printed colloquy between Senators Daschle and Lott into the *Congressional Record*, and to direct that “the permanent (*Congressional*) *Record* be corrected to provide for its inclusion with the resolution when it passed the Senate last Friday.”⁴ In addition to summarizing the provisions of S.Res. 8, the colloquy covered several additional issues.

“Filling the Amendment Tree:” Limits on Floor Leaders

In perhaps the most significant announcement, the two leaders pledged to refrain from using their preferential rights of recognition to “fill the amendment tree” in an effort to block

³ Several press stories have already discussed the challenges associated with implementing the equal staff and space agreement. See, Paul Kane and Mack Preston, “Shelby Digs in Over Intelligence Battle,” *Roll Call*, vol. 46, Feb. 8, 2001, p. 3, and Andrew Taylor, “Senate Organization Settlement Leaves Much to be Worked Out,” *CQ Weekly*, vol. 59, Jan. 13, 2001, pp. 127-128.

⁴ Sen. Harry Reid, remarks in Senate, *Congressional Record*, daily edition, vol. 147, Jan. 8, 2001, pp. S53-S54.

consideration of controversial issues.⁵ Senator Lott, on behalf of both leaders, declared the policy in the written colloquy.

... (It) is our intention that the Senate have full and vigorous debates in this 107th Congress, and that the right of all Senators to have their amendments considered will be honored. We have therefore jointly agreed that neither leader, nor their designees in the absence of the leader, will offer consecutive amendments to fill the amendment tree so as to deprive either side of the right to offer an amendment. We both agree that nothing in this resolution or colloquy limits the majority leader's right to amend a non-relevant amendment, nor does it limit the sponsor of that nonrelevant amendment from responding with a further amendment after the majority leader's amendment or amendments are disposed of.⁶

Minority Senators as Presiding Officers

The party leaders agreed that minority party Senators would be permitted to serve as presiding officers of the Senate. This differed from the usual Senate practice under which only majority party Senators serve as temporary presiding officers.

Party Access to Space in the Capitol

The colloquy further specified that both parties would “have equal access” to common space in the Capitol complex for purposes of holding meetings, press conferences, and other events. This supplemented the provisions in S.Res. 8 guaranteeing the minority equal committee office space.

Additional Issues

The agreement embodied in S.Res. 8 was not comprehensive. It did not address many parliamentary issues. As Senator Lott noted in floor remarks, it covered the issues on which the party leaders were able to reach agreement. “In instance after instance, Senator Daschle and I discussed points, argued about points. When we could not come to agreement, we said we would deal with the rules as they are. So we got it down to what really matters.”⁷

For example, one issue that was not resolved was conference committee composition. Although the agreement specified equal party strength on the Senate's standing, special, and joint committees, it did not specify equal party strength on conference delegations. Some Senate Republicans were insistent that a majority of Senate conferees be Republicans, reflecting the tie-breaking vote of Vice President Cheney available to approve any conference compromise. As one Republican Senator noted, “I think it's absolutely our position, and my position, that we have to control the conferences.”⁸

⁵ An amendment tree is the diagram describing the number and type of potential amendments that may be offered to a pending amendment, depending upon the textual form taken the pending amendment to a measure. For example, to an amendment proposing to insert text in a bill, both a second-degree substitute and a second-degree perfecting amendment could be offered. But, if the perfecting amendment were offered before the substitute, the substitute could not be offered until the perfecting amendment was disposed of. Under this circumstance, the floor leaders have pledged not to offer a first-degree amendments to insert text and then immediately to offer their own second-degree amendment to block other Senators from offering a second-degree substitute. For a fuller description of Senate amendment trees and rules, see CRS Report 98-853, *The Amending Process in the Senate*.

⁶ Sen. Trent Lott, remarks in the Senate, *Congressional Record*, daily edition, vol. 147, Jan. 8, 2001, p. S54.

⁷ Sen. Trent Lott, remarks in the Senate, *Congressional Record*, daily edition, vol. 147, Jan. 5, 2001, p. S34.

⁸ Andrew Taylor, “Senate GOP to Share Power,” *CQ Weekly*, vol. 59, Jan. 6, 2001, p. 22.

The parliamentary stages through which the Senate passes to get to conference are usually handled by unanimous consent. This particularly includes granting authority to the presiding officer to appoint conferees, based on the recommendations of the committee and floor leaders. If objection is raised to granting this authority, Senate conferees are to be elected by amendable motion, debatable under the normal rules of the Senate.⁹ Senator Lott alluded to this possibility in the printed colloquy of January 8.

With respect to the ratios of members on conferences, we both understand that under previous Senate practices, those ratios are suggested by the majority party and, if not acceptable by the minority party, their right to amend and debate is in order.... (T)he intention of this resolution is not to alter that practice and this resolution does not serve to set into motion any action that would alter that practice in any way.¹⁰

The Senate did not name conferees through its traditional mechanisms during the powersharing period of the 107th Congress. During that time, the Senate agreed to send only two measures to conference committee, the budget resolution and the reconciliation bill, but it should be noted that conference procedures on these measures are governed in part by the Budget Act.¹¹ In both of these cases, a majority of the conferees were Republican.

Conclusion

On May 24, 2001, Senator James Jeffords announced his intention to leave the Republican party, to become an Independent, and to caucus with the Senate Democrats. With Senator Jeffords's announcement, the Democrats held a numerical edge in the Senate. On June 5, 2001, Senator Jeffords met with Senate Democrats at their weekly conference meeting. On June 6, the Senate convened with the Democrats as the acknowledged Senate majority party.

The powersharing agreement in effect in the Senate from January to June of 2001 was an experiment. It differed from many established practices of the Senate. The agreement was not comprehensive, and new issues came before the Senate that had to be resolved by informal agreements, unanimous consent negotiations, or other means. The success of any Senate organizational settlement depends in part upon its adaptability and that of its members to changing circumstances.

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⁹ For more information on the procedures for arranging to go to conference in the Senate, see CRS Report RS20454, *Going to Conference in the Senate*.

¹⁰ Sen. Trent Lott, remarks in Senate, *Congressional Record*, daily edition, vol. 147, Jan. 8, 2001, p. S54.

¹¹ More specifically, Sections 305(c)(2) and 310(e)(1) of the Budget Act preclude extended debate on the motions necessary to send a measure to conference.

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This report was written by Paul S. Rundquist, a former specialist at the Congressional Research Service. Dr. Rundquist has retired, but Elizabeth Rybicki is available to answer questions on the subject.

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